STATE OF MICHIGAN

IN THE SUPREME COURT

IN RE PETITION BY TREASURER OF
WAYNE COUNTY FOR FORECLOSURE,

WAYNE COUNTY TREASURER,

Petitioner,

-and-

MATTHEW TATARIAN & MICHAEL KELLY,

Intervening Parties-Appellants,

-vs-

PERFECTING CHURCH,

Respondent-Appellee,

---/

Supreme Court No. 129341

Court of Appeals No. 261074

Wayne County Circuit Court
No. 02-220192 PZ

WAYNE COUNTY TREASURER'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT OF THE BASIS OF APPELLATE JURISDICTION

This Court has jurisdiction over this tax forfeiture appeal pursuant to MCR 7.301 and MCR 7.302 because it granted Mathew Tatarian and Michael Kelly's application for leave to appeal from the July 11, 2005 order of the Court of Appeals. (Order, Supreme Court No. 129341, 2/24/06). This Court does not have jurisdiction over *Wayne County Treasurer v Westhaven Manor Limited Dividend Housing Ass'n*, 265 Mich App 285; 698 NW2d 879 (2005); it properly denied leave to appeal in that case because the case presented issues involving an earlier and different version of the statute now in place, and at issue here. To the extent that the parties and amici discuss *Westhaven* as authority, it dealt with an earlier version of the statute, and one which mandates different treatment of post-judgment proceedings than is permitted under the current version of the act.

STATEMENT OF THE QUESTION INVOLVED

This Court directed the parties to include among the issues to be briefed:

1) whether the trial court retained jurisdiction to grant relief from the judgment of foreclosure pursuant to MCR 2.612 (c), notwithstanding the provisions of MCL 211.78l(1) and (2); and

2) Whether MCL 211.78l Permits A Person To Be Deprived Of Property Without Being Afforded Due Process.

The jurisdiction of the circuit court is one of the questions to be decided by this Court, although the jurisdictional question presented must be carefully analyzed in light of the timing of an effort to re-open a judgment as affected by the various amendments to the General Tax Property Act. In *Perfecting Church*, the effort to re-open the judgment took place by way of a motion filed on May 14, 2004. This was after MCL 211.78l had been amended by 2003 PA 263, which became effective on January 5, 2004. The provisions of MCL 211.78l to be dealt with in deciding the outcome of this appeal pertain to jurisdiction as it was established under the statute as amended in 2004. The Court is not presented with a jurisdictional inquiry that would speak to or decide the question of jurisdiction under earlier versions of the statute, and it should not reach out to decide issues unnecessary to the decision and not presented as part of a fully-litigated controversy. Our adversary system is founded on the premises that "before a judge can gauge the full force of an argument, it must be presented to him with partisan zeal by one not subject to the constraints of judicial office. The judge cannot know how strong an argument is until he has heard it from the lips of one who had dedicated all the powers of his mind to its formulation." Lon L. Fuller, The Adversary System, in Talks on American Law 31 (Harold J. Berman ed, 1976).

STATEMENT OF FACTS

This appeal arises out of Perfecting Church's challenge to a judgment of foreclosure entered on March 10, 2003 in Wayne County Circuit Court with respect to certain property. (Judgment of Foreclosure, 3/10/03). Wayne County had petitioned for foreclosure on June 14, 2002 for non-payment of taxes. (Wayne County Circuit Court Register of Actions). The property was later sold to Matthew Tatarian and Michael Kelly as tenants in common.

Perfecting Church sought relief from the judgment by filing a motion. (Respondent's Motion for Relief From Judgment of Foreclosure, 5/14/04). The motion was filed on May 14, 2004, after the effective date of 2003 PA 263. After a hearing on July 7, 2004, the circuit court vacated the March 10, 2003 judgment of foreclosure as to Tax Parcel ID # 15005397, also known as 17843 Van Dyke, Detroit, Michigan. The circuit court required the Wayne County Treasurer to allow Perfecting Church to pay delinquent back taxes, penalties, and interest as of March 10, 2003. It also required the Wayne County Treasurer to pay Perfecting Church reasonable costs and attorney fees, required the Treasurer to record a Certificate of Error with the Wayne County Register of Deeds for the property, cancelled the quit claim deed issued by the Wayne County Treasurer to Matthew Tatarian and Michael Kelly, and required them to execute and deliver a quit claim deed to Perfecting Church. (Order Granting Relief from Judgment, 7/7/04).

Matthew Tatarian and Michael Kelly claimed an appeal to the Court of Appeals, which dismissed the appeal for "lack of jurisdiction since the foreclosure action against the other properties is still outstanding." (Order, Court of Appeals No. 257087, 10/22/04). Tatarian and Kelly then filed a delayed application for leave to appeal, which was "denied for lack of merit in the grounds presented." (Order, Court of Appeals No. 261074). Tatarian and Kelly then sought, and obtained, leave to appeal to this Court.

This Court directed the parties to include among the issues to be briefed:

(1) whether the trial court retained jurisdiction to grant relief from the judgment of foreclosure pursuant to MCR 2.612(C), notwithstanding the provisions of MCL 211.78l(1) and (2); and (2) whether MCL 211.78l permits a person to be deprived of property without being afforded due process.

ARGUMENT

THE CIRCUIT COURT'S JURISDICTION TO ENTERTAIN A MOTION FOR RELIEF FROM A JUDGMENT PURSUANT TO MCR 2.612(C) MUST BE DECIDED IN LIGHT OF THE GENERAL PROPERTY TAX ACT PROVISIONS AS THEY EXISTED WHEN PERFECTING CHURCH FILED ITS POST-JUDGMENT MOTION, WHICH WAS AFTER JANUARY 5, 2004, AND PURSUANT TO WHICH THE CIRCUIT COURT SOUGHT TO INVALIDATE THE JUDGMENT OF FORECLOSURE.

A. STANDARD OF REVIEW.

The circuit court's jurisdiction depends upon an interpretation of the General Property Tax Act, MCL 211.1 *et seq*. Statutory interpretation presents a question of law that is reviewed de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). See also, *General Motors Corp v Dep't of Treasury, Revenue*, 466 Mich 231; 644 NW2d 734 (2002).

B. THE JURISDICTIONAL ISSUE PRESENTED IS A NARROW ONE.

Matthew Tatarian and Michael Kelly urge this Court to reverse the circuit court ruling, which vacated the judgment of foreclosure. (Appellant's Application for Leave to Appeal, 8/22/05). In making this argument, they assert that the judgment of foreclosure was entered on March 10, 2003, and that they purchased the property and received quit claim deed on November 4, 2003. They argue that MCL 211.78l limits the circuit court's jurisdiction. The read MCL 211.78l to mean the sole proper arena for seeking redress is in the court of claims. In their view, the only relief available is money damages, and not an order vacating a judgment of foreclosure. Perfecting Church disputes this interpretation of the statute and argues that it is entitled to relief from the judgment because its property should have been exempt from taxation and it purportedly failed to receive notice sufficient to satisfy due process. Perfecting Church sought relief from the judgment of foreclosure by filing a motion pursuant to MCR 2.612(C). Perfecting

Church relies upon *Wayne County Treasurer v Westhaven Manor Limited Dividend Housing Ass'n*, 265 Mich App 285; 698 NW2d 879 (2005), but fails to adequately grapple with the key changes to the statute that occurred after *Westhaven* and before their motion for relief from the judgment was filed.

The Michigan Association of County Treasurers offers a wealth of non-record legislative history regarding the policy issues that precipitated the changes to the tax foreclosure process in Michigan, including the house and senate bill analyses to various versions of amendments offered during this process. Resort to "legislative history" in the search for legislative intent is a perilous venture. *Marposs Corp v Troy*, 204 Mich App 156, 167-168, n 2; 514 NW2d 202 (1994) overruled on other grounds by *Bendix Safety Restraints Group, Allied Signal, Inc v Troy*, 215 Mich App 289; 544 NW2d 481 (1996) (Taylor, P.J., dissenting), quoting Address by Justice Antonin Scalia before the Attorney General's Conference on Economic Liberties (June 14, 1986). This enterprise is doubly fraught with danger in Michigan because it lacks an authoritative legislative record. *Id.* Bill analyses do not necessarily represent the views of even a single legislator. They are prepared by House and Senate staff, and do not constitute an official statement of legislative intent. Thus, this Court has rejected use of so-called legislative history of the sort offered by amici as a basis for interpreting statutes. *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 587 n 7; 624 NW2d 180 (2001). The Michigan Association of County Treasurers' discussion of jurisdiction, largely based on extraneous policy material, blurs the distinctions between the statutes that were in effect at various dates and times. Only one of those statutes is before the Court. Other amici also argue about the statute without carefully identifying the relevant statute in light of the time of the post-judgment events.

The circuit court's jurisdiction has changed because of the recent amendments to the General Property Tax Act. These changes are significant. Precision is therefore required when

discussing efforts to invoke the circuit court's jurisdiction after a judgment of foreclosure has been entered.

C. THE GENERAL PROPERTY TAX ACT HAS BEEN REPEATEDLY AMENDED SINCE 1999 AND EACH AMENDMENT ALTERED THE STATUTORY SCHEME.

1. ACT 123, PUBLIC ACTS OF 1999.

Act 123, Public Acts of 1999 amended the General Property Tax Act in various ways. The amendment was part of a large package of bills addressing the tax reversion process, and the various provisions were enacted with multiple effective dates. Changes to sections 78a-78p were made effective as of October 1, 1999. The act was "intended to strengthen and revitalize the economy of the state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes." 1999 PA 123, § 78(1). It altered procedures for subjecting property with delinquent taxes to forfeiture, foreclosure, and sale. 1999 PA 123, § 78a(1). The statute provided for rights of redemption that would expire twenty-one days after the court entered an order foreclosing on the property. 1999 PA 123, § 78f(1)(h); § 78g. Under the act, the foreclosing governmental unit was to file a petition with the clerk of the circuit court of the county listing forfeited property, which had not been redeemed, seeking judgment in favor of the foreclosing governmental unit for the forfeited unpaid taxes, interest, penalties, and fees listed against each parcel of property. 1999 PA 123, § 78h. The act set forth notice procedures before the hearing and allowed for property to be removed from the petition before entry of the judgment if it was redeemed. *Id.* Under the statute, the owner of a property interest who "has been properly served with a notice" but "failed to redeem" as provided, was barred from asserting that the notice was insufficient or inadequate on the ground that someone else was not served.

The statute also allowed the property owner or any interested person to appear at the hearing to redeem the property or show cause why absolute title should not pass to the

foreclosing governmental unit. 1999 PA 123, § 78j. According to the statute, "all redemption rights to the property expire 21 days after the circuit court enters a judgment foreclosing the property as requested in the petition for foreclosure." Section 78k(5). But the act provided for an appeal of the judgment to the court of appeals. Section 78k(7). It also contemplated a stay of the circuit court judgment pending any appeal, if the person appealing the judgment paid the amount due under the judgment within twenty-one days to the county treasurer together with a notice of appeal. *Id.*

A person claiming an interest in the property was entitled to appeal the circuit court's judgment foreclosing property to the court of appeals, and the judgment of foreclosure was stayed until the court of appeals reversed, modified, or affirmed the judgment. 1999 PA 123, § 78l. If the circuit court's judgment was affirmed on appeal, the amount determined to be due was to be refunded to the person who had appealed the judgment. If the circuit court's judgment was reversed or modified on appeal, then the county treasurer was obligated to refund the amount due to that person, if any, and retain the balance. *Id.* The act also gave the court of claims original and exclusive jurisdiction in any action to recover monetary damages. Section 78l(2).

Nothing in the act specifically addressed the situation of a person with a property interest who did not get notice of the forfeiture proceedings, a point relied on by the majority in *Wayne County Treasurer v Westhaven Manor Limited Dividend Housing Ass'n*, 265 Mich App 285; 698 NW2d 879 (2005). Nor did the language of the statute restrict the circuit court's ability to decide motions for relief from the judgment pursuant to MCR 2.612. The court rule provides a circuit court with authority to grant relief from a judgment or order in specified circumstances:

> (1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

(d) The judgment is void.

(e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) Any other reason justifying relief from the operation of the judgment.

(2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken. A motion under this subrule does not affect the finality of a judgment or suspend its operation.

(3) This subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding; to grant relief to a defendant not actually personally notified as provided in subrule (B); or to set aside a judgment for fraud on the court.

MCR 2.612(C). The court rule mandates that the motion be filed within a "reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken." MCR 2.612(C)(2). The rule further specifies that subsection (C) does not "limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding; to grant relief to a defendant not actually personally notified as provided in subrule (B); or to set aside a judgment for fraud on the court." *Id.* Subrule (B) allows a court to relieve the defendant from the judgment, order, or proceedings for which personal jurisdiction was necessary, if the defendant was required to be notified, but did not in fact have knowledge of the pendency of the lawsuit, and shows reason justifying relief from the judgment and that innocent third parties will not be prejudiced. If the defendant does so, the court is authorized to grant relief. The defendant must pursue this relief by entering an

appearance within one year of the final judgment. *Id.* Nothing in the statute as amended by 1999 PA 123, restricted or eliminated these rights.

The Legislature's silence concerning rights provided for under Michigan court rules can not be read as a legislative policy overriding them *sub silentio*. To the contrary, silence about these remedies suggests a legislative intent to harmonize the statute with the court rules.

2. ACT 101, PUBLIC ACTS OF 2001.

This 2001 bill was enacted to amend Section 78i, as it had been enacted by 1999 PA 123. The most critical change is the addition of subsection (4), which provides in the 2001 version:

> If the foreclosing governmental unit or its authorized representative discovers any deficiency in the provision of notice, the foreclosing governmental unit shall take reasonable steps in good faith to correct that deficiency not later than 30 days before the show cause hearing under section 78j.

The amendment did not alter the circuit court jurisdiction or the availability of an appeal to the court of appeals. Nothing in the amendment dealt with the availability of relief under MCR 2.612. It simply provided a legislative safeguard allowing the foreclosing governmental unit to correct any defects in notice before the show cause hearing took place.

3. ACT 263, PUBLIC ACTS OF 2003.

Act 263 of Public Acts 2003 became effective on January 5, 2004. It governs *Perfecting Church*, but not *Westhaven*.

The provisions adopted in this amendment allow a foreclosing governmental unit to cancel the foreclosure by recording a certificate of error with the register of deeds if the property has not been transferred under section 78m. 2003 PA 264, § 78k(9). The foreclosing governmental unit may exercise this power to cancel a foreclosure if the property has not been transferred and the governmental unit discovers any of the following:

(a) The foreclosed property was not subject to taxation on the date of the assessment of the unpaid taxes for which the property was foreclosed.

(b) The description of the property used in the assessment of the unpaid taxes for which the property was foreclosed was so indefinite or erroneous that the forfeiture of the property was void.

(c) The taxes for which the property was foreclosed had been paid to the proper officer within the time provided under this act for the payment of the taxes or the redemption of the property.

(d) A certificate, including a certificate issued under section 135, or other written verification authorized by law was issued by the proper officer within the time provided under this act for the payment of the taxes for which the property was foreclosed or for the redemption of the property.

(e) An owner of an interest in the property entitled to notice under section 78i was not provided notice sufficient to satisfy the minimum requirements of due process required under the state constitution of 1963 and the constitution of the United States.

(f) A judgment of foreclosure was entered under this section in violation of an order issued by a United States bankruptcy court.

Subsection 78k(9). The bill also provides for actions for recovery of monetary damages after a judgment for foreclosure to be brought in the court of claims.

Another key change occurred with the enactment of this statute. Presumably in response to circuit court orders granting post-judgment relief from foreclosure judgments even after the property had been transferred, the legislature added new language to section 78k of the statute. Section 78k(5)(g) restricted the circuit court's ability to modify, stay, or hold invalid a judgment of foreclosure:

> A judgment entered under this section is a final order with respect to property affected by the judgment and except as provided in subsection (7) shall not be modified, stayed, or held invalid after the March 31 immediately succeeding the entry of a judgment foreclosing property under this section, or for contested cases 21 days after the entry of a judgment foreclosing the property under this section.

2003 PA 263, Section 78k(5)(g). This language limits the circuit court's ability to alter a judgment after a specified time has elapsed. Once this language took effect, the only remaining safety valve is found in subsection 7. That provision allows either the foreclosing governmental unit or a person claiming a property interest in the foreclosed property to appeal the order or

judgment foreclosing property to the Court of Appeals, under specific circumstances. Section 78k(7). For the first time with this amendment, the General Property Tax Act directly addressed whether a court can modify a judgment or hold it invalid. The amendment severely restricted the normal availability of post-judgment relief. This language amounts to the adoption of a substantive policy limiting post-judgment relief to strengthen the policy of finality embodied in the statute's provisions.

D. *WESTHAVEN* IS NOT PENDING BEFORE THIS COURT AND THE LEGAL ISSUES DECIDED THERE AROSE UNDER A DIFFERENT SET OF STATUTORY PROVISIONS AND INVOLVED A DIFFERENT FACTUAL RECORD.

The briefs and arguments presented to this Court offer an uncommonly confusing series of statutory and constitutional arguments regarding the tax foreclosure process and the relief available when something in that process goes awry. This Court earlier denied leave to appeal in *Wayne County Treasurer v Westhaven Manor, et al*, 265 Mich App 285; 698 NW2d 879 (2005) lv den 474 Mich 862; 703 NW2d 190 (2005). Consistent with that decision, this Court should here decide the proper interpretation and effect of the General Property Tax Act as it exists after being amended by 2003 PA 263. This effort has been hampered by some of the briefs, which fail to carefully analyze the timing and effect of provisions that have been changed. Also, contrary to one of the briefs, 2003 PA 263, including its revision to section 78k(5)(g), applies here because the effort to reopen the judgment in *Perfecting Church* took place on May 14, 2004, after the January, 2004 effective date of the 2003 amendments. (In contrast, the property owners claiming to have been deprived of their property without notice in *Westhaven* moved to reopen the judgment on March 3, 2003, before the effective date of 2003 PA 263).

E. THE GENERAL PROPERTY TAX ACT, AS AMENDED BY 2003 PA 263, DOES NOT ALLOW A CIRCUIT COURT TO MODIFY, ALTER, OR HOLD A JUDGMENT INVALID AFTER THE MARCH 31ST FOLLOWING THE ENTRY OF THE JUDGMENT EXCEPT AS SPECIFICALLY PROVIDED IN THE STATUTE.

1. SECTION 781 CAN BE HARMONIZED WITH MCR 2.612 TO GIVE BOTH EFFECT.

This Court has repeatedly required interpretation of a statute in accord with its plain meaning. The primary task in construing a statute is to discern and give effect to the intent of the Legislature. *Shinholster v Annapolis Hospital*, 471 Mich 540, 548-549; 685 NW2d 275 (2004). The words contained in a statute provide the most reliable evidence of the Legislature's intent, and this Court gives meaning to every word, phrase, and clause in the statute. *Id.* at 549. The Court considers both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme. *Id.* Where the wording or language of a statute is unambiguous, the Legislature is deemed to have intended the meaning clearly expressed, and the statute must be enforced as written. *Id.* "A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co General Hospital*, 466 Mich 57, 63; 642 NW2d 663 (2002). This Court has reiterated often and clearly that the courts of this state may read nothing into an unambiguous statute. See e.g., *Halloran v Bhan*, 470 Mich 572, 577; 683 NW2d 129 (2004); *Neal v Wilkes*, 470 Mich 661, 670 n 13; 685 NW2d 648 (2004) ("Plaintiff ... is adding words to the act that simply are not there."); *State Farm Fire & Casualty Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002) (judiciary's role includes interpreting statutes, not writing them); *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). Only where the words are ambiguous may the court look beyond them. *People v Borchard-Ruhland*, 460 Mich 278, 284-285; 597 NW2d 1 (1999). A statute is construed by considering both the plain meaning of a critical word or phrase and its

placement, purpose, and grammatical context within the statute. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999).

These principles suggest that the Legislature did not abolish or restrict the circuit court's post-judgment jurisdiction under the General Property Tax Act as it existed before 2004. The provisions adopted in 1999 sought to speed the foreclosure process by shortening the redemption periods, to ensure due process by requiring a series of efforts to give notice to those holding property interests, and allowing those holding recorded or unrecorded interests, which were extinguished by the foreclosure process, to sue for money damages in the court of claims. 1999 PA Section 78l(1-4). The act barred suits against a subsequent owner. *Id.*

But the statute did not discuss other circuit court jurisdiction or power to grant relief from a judgment. Nor did it mention post-judgment relief under MCR 2.612. Nothing in the language reflects a legislative effort to deprive a circuit court of its authority to amend, modify, or vacate a judgment. Thus, the statute can and should be harmonized with the traditional right (and obligation) of a circuit court to correct a judgment.

MCR 2.612 empowers a circuit court to grant relief if the following grounds are shown:

> (1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:
>
> > (a) Mistake, inadvertence, surprise, or excusable neglect.
> >
> > (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
> >
> > (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
> >
> > (d) The judgment is void.
> >
> > (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) Any other reason justifying relief from the operation of the judgment.

The rule requires a motion seeking such relief to be brought within a reasonable time, and for grounds a, b, and c, within one year after the judgment.

MCR 2.612 serves an essential function in Michigan civil procedure. It offers a process to allow a circuit court to correct mistakes in a judgment. It protects the integrity of the judicial process by ensuring that the courts are used to effectuate due process. It also offers a safety valve to correct unjust outcomes achieved by fraud on the court. These measures are not inconsistent with the 1999 amendments to the General Property Tax Act. They can be readily harmonized, which this Court tries to do when possible. When there is no inherent conflict, "[w]e are not required to decide whether [the] statute is a legislative attempt to supplant the Court's authority." *People v Mateo*, 453 Mich 203, 211; 551 NW2d 891 (1996). "We do not lightly presume that the Legislature intended a conflict, calling into question this Court's authority to control practice and procedure in the courts." *People v Dobben*, 440 Mich 679, 697, n 22; 488 NW2d 726 (1992).

Both 78l and MCR 2.612 can be given effect. Thus, it is error to read 78l to embody a legislative mandate to override circuit court jurisdiction as it existed before 2003 PA 263 became effective. Section 78l restricts the ability of former property owners to sue those who obtain the property at a foreclosure sale, or later. It does not restrict the circuit court's jurisdiction to grant post-judgment relief, as it is authorized to do under MCR 2.612. Section 78l deals only with suits for money damages, not with efforts to set aside, modify, or vacate a judgment, thus potentially obtaining the property back. Section 78l does not apply to tax foreclosure proceedings at all. Although section 78l creates jurisdiction in the court of claims, it does so in a limited manner:

> The court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section.

Section 78l(2). In addition, the judgment of foreclosure is predicated on a finding "that those entitled to notice and an opportunity to be heard have been provided that notice and opportunity." Section 78k(5)(f). If the court later learns this finding, and thus its judgment, was based on a mistake or fraud or other ground set forth in MCR 2.612, it is empowered to correct the situation at the post-judgment stage. Thus, under the statute as it existed in 1999, MCR 2.612 allowed a circuit court to modify a judgment or hold it invalid.

2. SECTION 78k(5)(g), WHICH WAS NOT EFFECTIVE UNTIL 2004, ALTERS THIS BY BARRING A CIRCUIT COURT FROM MODIFYING, STAYING, OR HOLDING A JUDGMENT INVALID AFTER THE MARCH 31ST IMMEDIATELY SUCCEEDING THE ENTRY OF THE FORECLOSURE JUDGMENT EXCEPT FOR SPECIFIED CIRCUMSTANCES NOT PRESENT HERE.

2003 PA 263, which became effective on January 5, 2004, added language limiting the ability of a court to modify, stay, or hold a judgment invalid after a specified time had elapsed. This provision altered the power of a circuit court to provide post-judgment relief:

> A judgment entered under this section is a final order with respect to the property affected by the judgment and except as provided in subsection (7) shall not be modified, stayed, or held invalid after the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or for contested cases 21 days after the entry of a judgment foreclosing the property under this section.

MCL 211.78k(5)(g). The language explicitly limited judicial efforts to alter the judgment. It cannot be harmonized with MCR 2.612. The Legislature spoke plainly in crafting this language to bar changes to the judgment or rulings about the judgment that could deprive it of validity and force. The provisions is properly read to legislatively limit relief under MCR 2.612 on the basis of a substantive policy of ensuring finality and clear title after the expiration of the redemption period in uncontested cases, and after twenty-one days of entry of the judgment of foreclosure in contested cases.

This Court taught in *McDougall v Schanz*, 461 Mich 15, 27; 597 NW2d 148 (1999) that it has constitutional authority to adopt rules only governing matters of practice and procedure, not substantive law. 461 Mich at 27. According to the Court, "[I]t cannot be gainsaid that this Court is not authorized to enact court rules that establish, abrogate, or modify the substantive law." *Shannon v Ottawa Circuit Judge*, 245 Mich 220, 223; 222 NW 168 (1928). The *McDougall* court taught that the constitutional separation of powers provisions limit the reach of rule-making authority so that it does not reach substantive law:

> Rather, as is evident from the plain language of art. 6, § 5, this Court's constitutional rule-making authority extends only to matters of practice and procedure. *Shannon, supra* at 222-223, 222 N.W. 168. Accordingly, in order to assess the constitutionality of M.C.L. § 600.2169; M.S.A. § 27A.2169, we must determine whether the statute addresses purely procedural matters or substantive law.

461 Mich at 27 (footnotes omitted). Under *McDougall*, the Court looks to the statute that is in conflict with a court rule to determine whether it affects "purely procedural matters or substantive law." *Id.*

MCL 211.78k(5)(g) does not affect purely procedural matters but rather embodies a legislative balancing of conflicting interests: those of property owners whose interests have been extinguished in foreclosure judgments and those of persons who have obtained the property at or after the foreclosure sale. The Legislature has weighed in its calculus the societal need to quickly conclude the foreclosure process with clear and insurable title because the failure to do so is associated with blight and a loss of important economic activity. Given these substantive policy interests, MCL 211.78k(5)(g) cannot be seen as "purely procedural." In any conflict, the court rule must therefore yield to the legislative pronouncement. As a result, this Court should uphold 2003 PA 263 against any constitutional challenge based on the conflict with MCR 2.612.

3. A NEW LEGISLATURE CANNOT RETROACTIVELY ALTER A BILL ENACTED BY THE 1999 LEGISLATURE BY LABELING A CHANGE AS "CURATIVE."

In enacting this language, the Legislature included an enacting section that characterized the change as "curative" and "intended to express the original intent of the legislature concerning the application of 1999 PA 123." 2003 PA 263, enacting section 1. But this legislative assertion regarding "the original intent" ought not be considered in interpreting the earlier legislation because it amounts to an impermissible effort to override judicial decisions interpreting that legislation. See generally, N. Singer, Sutherland on Statutory Construction (5th ed 1992), § 27.03, p 472 ("The usual purpose of a special interpretative statute is to correct a judicial interpretation of a prior law which the legislature considers inaccurate. Where such statutes are given any effect, the effect is prospective only"). Recognizing the separation of powers concerns raised by allowing a legislature to retroactively "clarify" an existing statute when the impetus for the clarification was a judicial decision, the Washington Supreme Court embraced as the better view an approach avoiding a direct confrontation between the branches of government by interpreting the provision as an amendment, applicable prospectively. *Johnson v Morris*, 557 P2d 1299 (1976). The legislature is empowered to change existing statutes in response to judicial pronouncements. But it is not empowered to legislatively overrule those pronouncements. And even in seeking to effectuate a legislative change retroactively, the legislature may not do so when it affects vested rights. See generally, *Romein v General Motors Corp*, 436 Mich 515; 462 NW2d 555 (1990) ("[e]ven though the Legislature has authority to remedy the effects" of the court's decisions, and "may do so by repealing statutes which those decisions interpret, the Legislature lacks the power to act as a supreme judicial body"). Thus, the Michigan Legislature's label of "curative" should be interpreted as a prospective legislative pronouncement to address problems that the Legislature saw with the original enactment.

This interpretative approach is particularly appropriate here because the amendment was adopted several years after the original bill and by a newly-constituted legislative body. A legislature may not interpret its own statute, and has even less authority to interpret the statute of a prior legislature. This Court cautioned against such efforts:

> In 1902 the Supreme Court of Wisconsin had this to say in *Northern Trust Co. v. Snyder*, 113 Wis. 516, 89 N.W. 460, 464:
>
> "* * * It is too elementary to justify us in referring to authority on the question, that a legislative body is not permitted under any circumstances to declare what its intention was on a former occasion so as to affect past transactions. * * * Its members have no more right to construe one of its enactments retroactively than has any private individual. * * *"

Presque Isle Twp School Dist No. 8 Board of Ed v Presque Isle Co Bd of Ed, 364 Mich 605; 111 NW2d 853 (1961) citing in *Northern Trust Co v Snyder*, 113 Wis 516; 89 NW 460, 464 (1902) with approval.

These longstanding principles should be given weight here. In 2003, long after the 1999 amendments to the General Property Tax Act were voted upon and adopted by the Michigan Legislature, a new legislature, that was elected several years after 1999 and sitting in 2003, has offered an amendment that changes the 1999 law. It is entitled to do so. But it is not entitled to retroactively change the law in effect before it acted. A newly-constituted legislative body may have different individual members, a different majority party, and a different sense of what its constituents want and may have entirely different policy views on a matter in controversy. Thus, the new legislative body is allowed to legislate, including to amend prior law. But it is not permitted to retroactively undo what an earlier body with possibly different policy preferences has done. The enacting clause of 2003 PA 263 should not be interpreted to allow the Legislature to retroactively alter the prior law. This Court should reject any such effort and enforce the earlier provisions in a suitable case if it comes before the Court in accord with their plain meaning.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to MCR 7.214(E)(2) the Wayne County Treasurer hereby request that this Court docket this appeal for oral argument.

Oral argument will afford counsel the opportunity to address any questions that the Court may have concerning any complexities of the lower court record and the specifics of the parties' respective positions on appeal. Counsel for Wayne County Treasurer's participation in oral argument will enable her to succinctly place the County Treasurer's position before this Court. Given the complexities of the issues presented, and their importance to the Treasurer on an ongoing basis, it is the Wayne County Treasurer's belief that oral argument is necessary and will benefit all involved and that the decisional process will be significantly aided by this Court's allowance of oral argument.

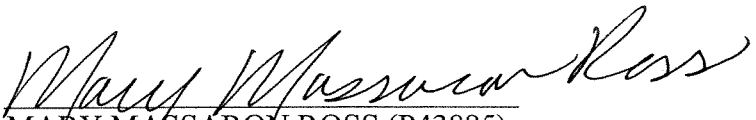
See generally, Chief Judge Merritt's comments in *Judges on Judging: The Decision Making Process in the Federal Courts of Appeals*, 51 Ohio St L J 1385, 1386 (1990), wherein he stated, "At its core, the adversary process is oral argument."

RELIEF

WHEREFORE, the Wayne County Treasurer respectfully requests this Court to issue a ruling consistent with the arguments presented herein and to grant it such other relief as is warranted in law and equity.

Respectfully submitted,

PLUNKETT & COONEY, P.C.

BY: 

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